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E.O. 12958: DECL: 1.6 FIVE YEARS AFTER CLOSURE ICTY

TAGS: [BK](#) [HR](#) [KAWC](#) [NL](#) [PHUM](#) [PREL](#) [SR](#) [ICTY](#)

SUBJECT: ICTY: DEL PONTE DEFENDS POSITIVE ASSESSMENT OF
CROATIAN COOPERATION

REF: A. (A) STATE 84033

[1](#)B. (B) ZAGREB 598

Classified By: Legal Counselor Clifton M. Johnson per 1.5(d).

[1](#)1. (C) Summary. Carla Del Ponte, Chief Prosecutor of the International Criminal Tribunal for the Former Yugoslavia (ICTY), vigorously defended her positive assessment to EU officials of Croatia,s cooperation with the Tribunal. She based her decision on Croatia,s cooperation in recent weeks with respect to the transfer of eight indictees under two indictments as well as the unprecedented level of involvement Croat authorities had accorded ICTY investigators in efforts to locate and apprehend fugitive Ante Gotovina. She believed these efforts, although of very recent vintage, to be genuine and said that under these circumstances she had "no choice" but to inform European Commissioner Verhungen that "Croatia is now cooperating fully" with the ICTY. End Summary.

[1](#)2. (C) Embassy Legal and Deputy Legal Counselors met with Chief Prosecutor Del Ponte, Special Political Adviser Ruch, and Senior Adviser Nikiforov on the morning of April 16 to deliver ref A demarche. Del Ponte took immediate issue with the USG assessment that Croatia could not be given an overall positive mark with respect to its full cooperation with the Tribunal as long as Gotovina remained a fugitive. "I disagree with the assessment from Washington," she interjected and explained that her view towards Croatia had changed dramatically in the past month. She said her new assessment was based on Croatia,s cooperation in transferring all eight indictees under the two most recent Tribunal indictments. Moreover, Croatia had provided full access and cooperation with respect to documents and witnesses. "Even in Bosnia," she said, she had "not been able to describe such full cooperation."

[1](#)3. (S) With respect to Gotovina, Del Ponte explained that the OTP was now being given an unprecedented level of involvement in Croat efforts to locate and apprehend him. This new cooperation was initiated by a report last month from the GOC in which Croatia repeated its previous conclusion that Gotovina was not in Croatia. Del Ponte said that the report was "not satisfactory" and informed the Justice Minister that "we must work differently because you have not done all you must do." Following this meeting, the two agreed that OTP Chief of Investigations Lopez-Terres would visit Zagreb and be given full access to information developed by a special team that the GOC had established, with Chief State Prosecutor Mladen Bajic as its head, to locate and apprehend Gotovina. Subsequently, the GOC removed two officials from positions relating to the team after the OTP expressed its belief that the two were linked to efforts to protect Gotovina. When the OTP received and passed information two weeks ago that Gotovina was in Croatia, the GOC immediately reacted to the information and took all of the steps requested by the OTP to follow up the lead. The cooperation between the OTP and the special team extends to Croat implementation of ICTY requests to monitor the communications of certain individuals. The ICTY is also provided with direct access to the transcripts resulting from those intercepts. This degree of OTP involvement in the Croat efforts has convinced Del Ponte that the measures to apprehend Gotovina are "no doubt" genuine.

[1](#)4. (C) Del Ponte dismissed suggestions that her unqualified report to the EC had squandered OTP leverage over Croatia and further hampered efforts to obtain cooperation from SAM on Mladic. She said that her upcoming written report to the Security Council on May 31 and her oral statement on June 15 provide an opportunity to qualify the positive assessment if the Croatian attitude changes. She said that she had emphasized this point to PM Sanader. In a separate discussion with Ruch and Nikiforov they also advised that Del Ponte planned to both call and write Sanader in the next few days to underscore that cooperation must continue with respect to Gotovina or Del Ponte would provide a negative report to the Security Council.

[1](#)5. (C) Del Ponte similarly rejected criticism that she had played into the hands of SAM critics by changing the standard for full cooperation. In response to Legal Counselor,s

point that Del Ponte had said that "full cooperation" for SAM requires the transfer of Mladic while "full cooperation" for Croatia apparently doesn't require the transfer of Gotovina, Del Ponte asserted that there was no similarity between the state of cooperation in the two countries and that Belgrade had not come close to establishing a good faith effort to apprehend Mladic. Del Ponte said that were SAM to take the steps taken by the GOC, she would be prepared to find them in "full cooperation" with the ICTY even if their efforts did not result in the transfer of Mladic. Del Ponte also distinguished the two fugitives noting that Gotovina was a criminal before the war crimes charges, was part of an international criminal network, and had many foreign contacts that made it more difficult for him to be caught, while Mladic was more inseparable from Belgrade. Concluding, Del Ponte asserted that rewarding Croatia would actually help ICTY efforts in Serbia by demonstrating the tangible benefits of cooperating with the Tribunal.

16. (C) Comment. Del Ponte's dramatic and precipitous reassessment of the OTP's relationship with Croatia can be explained by both substance and personality. Substantively, Croatia's conduct in facilitating the recent transfers is undeniably important as is its responsiveness on ICTY witness, document, and fugitive-apprehension related requests (see ref B). But the change in OTP policy was less one of deliberate design than it was impulsive and unpremeditated. Del Ponte's senior advisers informed us that they had drafted a carefully nuanced set of points for her conversation with Verhengen in order to balance out the desire to send a positive signal to the GOC while retaining important leverage over Gotovina. During the call, however, she abandoned the points and gave the largely unqualified assessment. When Verhengen requested it in writing, she was boxed in and her staff was left with drafting a much more forward-leaning message than planned. As for the political consequences, Del Ponte's approach can be explained by her consistent tone-deafness to the region and her response to the UK's demarche the previous day on the same subject: "The political aspects are for you to worry about." End comment.
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